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FEB 20 2014

**SECRETARY, BOARD OF
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

vs.

UTAH DIVISION OF OIL, GAS AND
MINING,

Respondents,

and

ALTON COAL DEVELOPMENT, LLC and
KANE COUNTY, UTAH,

Respondent-Intervenors.

**INTERIM ORDER
CONCERNING MOTION FOR
DISCOVERY**

Docket No. 2009-019
Cause No. C/025/0005

This matter comes before the Board on Respondent-Intervenor Alton Coal Development's ("ACD") Motion for Leave to Conduct Discovery – Award of Fees and Costs, which was filed on October 15, 2013.

The Board has considered the following:

- ACD's Motion for Leave to Conduct Discovery – Award of Fees and Costs, which was filed on October 15, 2013;
- ACD's Memorandum in Support of Motion for Leave to Conduct Discovery – Award of Fees and Costs, which was filed October 15, 2013;

- Petitioners Utah Chapter of the Sierra Club et al.'s ("**Sierra Club**") Response of Petitioners to Alton Coal Development's Motion, which was filed on November 22, 2013;
- ACD's Reply Memorandum in support of Motion for Discovery, which was filed on December 20, 2013;
- Respondent Utah Division of Oil, Gas and Mining's ("**Division**") Response to Alton Coal Development LLC's Motion for Discovery and to Petitioners' Response, which was filed on January 2, 2014 ("**Division's Response**"); and
- Sierra Club's Petitioners' Surreply to Alton Coal Development's Motion for Leave to Conduct Discovery – Award of Fees and Costs, which was filed January 8, 2013.

Having considered the above-referenced submissions, as well as the oral arguments made by the parties at the Board hearing on the morning of January 22, 2014, the Board hereby makes the following Order.

For the reasons discussed in the Division's Response, the Board concludes that ACD must file its contemplated petition for attorney fees before the Board issues any rulings on discovery related to such a claim. It is difficult for the Board to analyze the question of whether and to what degree to authorize discovery in the absence of any pending claim. For this reason, the Board denies, without prejudice, ACD's motion for discovery and directs ACD to submit any petition for attorney fees within ten business days after the issuance of this order. The petition should address the bad faith standard and the reasons for ACD's allegations concerning bad faith.

Once its attorney fees petition is filed, ACD may then file a renewed motion for leave to conduct discovery based upon the claims asserted in its attorney fees petition. The renewed

discovery motion should be tailored to ACD's fee petition and should address whether good cause exists for the Board to authorize discovery, and if so, whether discovery should be limited in any way.

In the Division's Response, it requested the Board issue an order declaring the Division is not liable for attorney fees incurred during this phase of the litigation. (Division's Response 15.) The Board sees no reason why the Division would be liable for attorney fees during this phase of the litigation. Unlike the merits phase of this matter, the present phase (concerning ACD's attorney fees claim against the Petitioners) does not involve an inquiry into the Division's conduct in administering the coal program. No party has suggested that the Division will incur any attorney fees liability through its participation in this phase of the case and no party has opposed the Division's request for an order addressing this issue. For these reasons, the Board concludes that there is no basis upon which the Division can incur liability for attorney fees incurred in this phase of the case. The Board anticipates the Division will have a continuing role in this phase of the case in assisting the Board to make informed decisions concerning issues of general applicability such as when discovery is appropriate.

This Order addresses only ACD's potential fees petition against the Petitioners and matters related to that petition. It does not address the Sierra Club's pending fees petition filed on December 21, 2010 arising out of the merits phase of this matter.

Issued this 20th day of February, 2014.

UTAH BOARD OF OIL, GAS & MINING



Rutland J. Gill, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **INTERIM ORDER CONCERNING MOTION FOR DISCOVERY** for Docket No. 2009-019, Cause No. C/025/0005 to be mailed with postage prepaid, this 20th day of February, 2014, to the following:

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A handwritten signature in blue ink, reading "Julie Ann Carter", is written over a horizontal line.